

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICK OLMSTEAD,

Plaintiff,

v.

SECRETARY OF THE NAVY, RAY
MABUS,

Defendant.

No. C13-05051-BHS

DEFENDANT'S ANSWER

COMES NOW defendant Ray Mabus, Secretary of the Navy, by and through his attorneys, Jenny A. Durkan, United States Attorney for the Western District of Washington, and Marion J. Mittet, Assistant United States Attorney for said District, and hereby answers Plaintiff's Complaint as follows:

I. PARTIES

1.1. Admitted. Rick Olmstead is an employee of the Puget Sound Naval Shipyard and Intermediate Maintenance Facility, Bremerton, Kitsap County, Washington, and his Official Personnel Folder lists a residence in the State of Washington.

1.2. Admitted.

II. JURISDICTION AND VENUE

2.1. Statement of law (jurisdiction) not requiring an answer.

2.2. Statement of Law (venue) not requiring an answer.

III. FACTS

3.1. Admitted.

3.2. Denied that Plaintiff worked for the Fleet and Industrial Supply Center (FISC).
Plaintiff worked at the Puget Sound Naval Shipyard.

3.3. Denied that Plaintiff worked for the FISC. Plaintiff worked at the Puget Sound
Naval Shipyard. Denied that Plaintiff was a Pipefitter Supervisor I, Step 5.
Plaintiff had periods of being temporarily promoted to work leader
(non-supervisory) off and on, but Rick Olmstead was a WG-10 Pipefitter
(non-supervisory) at the time of his resignation in January 1992.

3.4. Denied that Plaintiff worked for the FISC. Plaintiff returned to work for the Puget
Sound Naval Shipyard in March of 2006.

3.5. Denied that Plaintiff lost sick leave. As to the allegation that Plaintiff was told he
could not be rehired back at the Supervisor I, Step 5 position because no record was
available to show that he had sufficient experience, without knowing who allegedly
told Plaintiff this, Defendant lacks sufficient information to admit or deny what
Plaintiff was supposedly told. However, Defendants states that Plaintiff was
rehired as a WG-10 Pipefitter, the highest permanent position he held at the time of
his retirement.

3.6. Denied. Rick Olmstead was promoted temporarily to foreman, Supervisor 1,
effective April 2009. The temporary promotion was to Step 1, the Step at which the
temporary grade change resulted in a pay increase over his current pay, as is the
standard practice.

3.7. Admitted that Plaintiff is employed as a Pipefitter Supervisor I, Series 4204, Grade
10. The position, however, is temporary.

3.8. Admitted.

- 1 3.9. Admitted that Plaintiff meets the minimum qualification for promotion to
2 Supervisor II, although he is not a permanent Supervisor I, which would be the
3 normal progression. Admitted that Plaintiff has veteran's preference for initial
4 hiring, but Plaintiff's veteran status has no bearing on internal promotion.
- 5 3.10. Admitted that younger employees without veteran's preference have been internally
6 promoted. Denied, however, that Plaintiff has more seniority in his current term of
7 service or in his supervisory experience.
- 8 3.11 Defendant lacks sufficient information to admit or deny.
- 9 3.12 Defendant has no way of knowing whether or not Plaintiff made informal
10 complaints to his supervisor and, therefore lacks sufficient information to admit or
11 deny. However, Defendant would point out that Plaintiff has had the training on
12 how to file an EEO complaint, but, other than the complaint at issue, he has not
13 filed an EEO complaint.
- 14 3.13. Denied. All official bulletin boards at the Puget Sound Naval Shipyard contain
15 clear information on the filing of an EEO complaint. Additionally, every employee
16 receives annual "mandatory" training which includes a discussion of the EEO
17 complaint process.
- 18 3.14 Without knowing to whom Plaintiff is referring, Defendant lacks sufficient
19 information to admit or deny. However, every supervisor spoken to this far has
20 denied any such conversation.
- 21 3.15 Defendant has no way of knowing what conversations Plaintiff may or may not
22 have had with employees of the Equal Employment Opportunity Commission
23 ("EEOC") and, therefore, Defendant lacks sufficient information to admit or deny.
24 Defendant, however, would point out that the Secretary of the Navy has no
25 authority over the EEOC.
- 26 3.16 Without knowing to whom Plaintiff is referring, Defendant lacks sufficient
27 information upon which to Admit or Deny. However, every manager spoken to this
28 far has denied any such conversation.

3.17. Admitted that Plaintiff applied and was listed on the 5 person best qualified certificate for consideration for promotion to Supervisor II in early 2012. Admitted that another best qualified candidate was selected, being the highest rated of the five candidates. Defendant, however, lacks sufficient information upon which to Admit or Deny what Plaintiff was told.

3.18 Denied. The selected candidate had more years of current continuous service than Plaintiff and had been a permanent Supervisor 1 for years unlike Rick Olmstead who has held temporary supervisory status only.

3.19 Lack information upon which to Admit or Deny, adding that the EEO Complaints Manager is a Regional Navy employee, and does not work for the Fleet and Industrial Supply Center Puget Sound.

3.20. Statement of Law not requiring an Answer.

IV. CAUSE OF ACTION 1: AGE DISCRIMINATION IN VIOLATION OF AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

4.1 Defendant incorporates by reference each and every answer set forth in paragraphs 1.1 through 3.20 above.

4.2 Denied. Additionally, Defendant would note that Plaintiff was initially hired under Veteran's Preference, but Veteran's Preference has no application for an internal promotion or application with regard to the ADEA.

4.3 Denied.

V. CAUSE OF ACTION II: HARASSMENT

5.1 Defendant incorporates by reference each and every answer set forth in paragraphs 1.1 through 4.3 above.

5.2 Without knowing to whom Plaintiff is referring, Defendant lacks sufficient information to admit or deny. However, every manager spoken to had denied making these comments.

5.3 Denied.

V. RELIEF SOUGHT

Paragraphs 4.1-4.5 set forth Plaintiff's request for relief to which no answer is required. Defendant, however, denies that Plaintiff is entitled to the relief requested in these paragraphs, or to any other form of relief in this matter.

Defendant hereby specifically denies each allegation of the complaint not herein before otherwise answered.

Further answering Plaintiff's complaint and as defenses thereto Defendant alleges the following affirmative and other defenses:

FIRST DEFENSE

The complaint fails in whole or in part to state a claim upon which relief can be granted.

SECOND DEFENSE

The complaint fails in whole or in part for lack of subject matter jurisdiction.

THIRD DEFENSE

The complaint fails in whole or in part for failure to exhaust administrative remedies.

FOURTH DEFENSE

Defendant had legitimate non-discriminatory business reasons for its decisions regarding plaintiff.

FIFTH DEFENSE

Defendant's actions were justified, reasonable, and made in good faith.

SIXTH DEFENSE

The injuries and damages alleged in the Complaint were not proximately caused by or contributed to by any negligent or wrongful act or omission of any agent, employee, or representative of the United States.

SEVENTH DEFENSE

Plaintiff failed to mitigate his damages, if any.

The United States hereby reserves the right to plead all other affirmative defenses or any applicable state and federal statutes, which through discovery may become applicable.

WHEREFORE, the United States respectfully prays for judgment as follows:

1. That Plaintiff take nothing by reason of this action;
2. That Plaintiff's complaint be dismissed with prejudice;
3. That Defendants be granted the costs and disbursements; and
4. For such other relief as the court deems just and proper.

DATED this 29th day of April, 2013.

Respectfully submitted,

JENNY A. DURKAN
United States Attorney

s/Marion J. Mittet
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 29, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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DATED this 29th day of April, 2013.

s/ Sharon P. Gore
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